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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re B.M. et al., Persons Coming Under
the Juvenile Court Law.

HUMBOLDT COUNTY DEPARTMENT
OF HEALTH AND HUMAN SERVICES,

Plaintiff and Respondent,

v.

G.D.,

Defendant and Appellant.

A144705

(Humboldt County Super. Ct.
Nos. JV060085, JV100089,
JV140173, JV140246)

G.D. (Mother), mother of B.M., S.K., M.P., and H.T., appeals from the juvenile court's orders declaring her four children dependents of the juvenile court, pursuant to Welfare and Institutions Code section 300, subdivision (b),¹ and removing them from Mother's custody, pursuant to 361, subdivision (c)(1). Mother contends substantial evidence does not support the court's dispositional findings and, alternatively, the court abused its discretion when it ordered supervised visitation. We shall affirm the juvenile court's orders.

¹ All further statutory references are to the Welfare and Institutions Code.

FACTUAL AND PROCEDURAL BACKGROUND

Prior Dependency Cases

Before the filing of the current petitions, there had been a total of 20 referrals alleging that Mother had abused or neglected the children, as well as 10 investigations and three dependency cases in which Mother was offered and/or provided services.

The prior cases included a non-detained petition filed on April 20, 2006, pursuant to section 300, subdivision (b), which alleged that Mother had been bitten twice by the same possibly rabid fox while sleeping outdoors. Mother had initially refused to participate in treatment, even though transmission of rabies to then two-month-old B.M. through breastfeeding was a possibility. The Department believed Mother's behavior could be an "indication of mental health issues." After Mother accepted rabies treatment, the petition was dismissed.

Less than two months later, on June 6, 2006, the Department filed another petition, pursuant to section 300, subdivision (b), in which it alleged that Mother was unable to protect B.M. from domestic violence by B.M.'s alleged father. It further alleged that Mother had not provided B.M. with adequate food, clothing, shelter, or medical care in that Mother and B.M. were living in a tent on a river bar and B.M. had significant diaper rash and dirt on his thighs, buttocks, anus, testicles, penis, and stomach; Mother had been observed feeding herself from dumpsters and sharing the food with three-month-old B.M.; and B.M. had sustained a fall and burns for which Mother did not seek medical care. Finally, the petition alleged that Mother's substance abuse and mental illness rendered her unable to provide B.M. with regular care.

B.M. was removed from Mother's custody and placed with the maternal grandmother. Mother was provided with almost two years of reunification services, but largely failed to comply with her case plan requirements. For example, she had made herself unavailable to the Department, had only visited sporadically with B.M., had remained homeless, had not followed any of the recommendations related to further counseling and medication, had provided no documentation showing participation in parenting classes, and had not made herself available for random drug testing.

Mother also participated in a psychological evaluation in 2006, and was diagnosed with mood disorder, not otherwise specified, with “many symptoms associated with psychotic disorder”²; histrionic personality with narcissistic personality features and schizotypal personality features.³ The psychologist concluded that, while Mother showed “an adaptive capacity to think logically and coherently, . . . she gives evidence of serious impairment of her ability to perceive people and events realistically. Her poor reality testing is likely to detract substantially from her ability to exercise good judgment as a parent. In particular, she may be prone to forming mistaken impressions of what children’s behaviors signify and to making ill-advised childcare decisions without appreciating the consequences of these decisions. . . . Her instances of poor judgment will probably interfere with her ability to function effectively as a parent. . . .” In a 2007 reassessment, the same psychologist recommended that Mother “participate in long term psychotherapy in order to attempt to ‘ground her’ . . . in reality.”

On September 29, 2008, the juvenile court terminated Mother’s reunification services, and B.M. was subsequently placed with his father, pursuant to a plan of family maintenance services. Thereafter, Mother gave birth to S.K. and reengaged in services.⁴

² Mother had reported “frank psychotic symptoms that may include visual or olfactory hallucinations, bizarre perceptual experience, and non-persecutory delusional beliefs.”

³ Mother had reported “that she has strange and peculiar thoughts and hears strange things when she is alone. She sometimes seems to hear her thoughts being spoken aloud. . . . She often thinks things are not real. She has had blank spells in which her activities were interrupted and she did not know what was going on around her. . . . At times she has a strong urge to do something harmful or shocking.”

⁴ In April and May 2009, Mother participated in another parenting evaluation. The psychologist found that she had “demonstrated a significant increase in her ability to parent children effectively.” While Mother “may be somewhat bereft in her ability to make consistently sound judgment[s],” the psychologist expressed the hope that Mother would “avail herself and her family of traditional methods for raising healthy and intelligent children, including medical and academic services as important, primary adjuncts.”

On June 10, 2009, the juvenile court granted joint legal and physical custody of B.M. to Mother and B.M.'s father, and on December 10, 2009, the court terminated the dependency.

Following the termination of the second dependency, the Department received two referrals alleging that Mother had physically abused B.M. and S.K.; both allegations were deemed unfounded. Then, on May 19, 2010, the Department received a referral alleging the general neglect of both children. The Department determined that these allegations were substantiated. The allegations stemmed from a domestic violence incident between Mother and her boyfriend, in which the boyfriend assaulted Mother while she was holding S.K. Mother did not appear to understand the needs of her children or the fact that they had been exposed to trauma.

The Department filed non-detained petitions on July 12, 2010, pursuant to section 300, subdivision (b), alleging that Mother had failed to protect the children from her boyfriend's conduct and placed them at risk due to her inability to recognize the danger. The petition also alleged that Mother's mental illness periodically rendered her unable to provide the children with regular care. This dependency was dismissed a month later, on August 12, 2010, after Mother entered into voluntary family maintenance services, which included domestic violence services, parent education, and housing and employment training. When Mother's third child, M.P., was born in December 2010, she was added to the case plan. Mother participated in services, said she would comply with a protective order, and the children's needs were being met. The family maintenance case closed in June 2011.

Current Dependency Case

After the third dependency case, the Department received four more referrals alleging general neglect and emotional abuse of B.M., S.K., and M.P., which ultimately led to the filing of the current dependency case. On October 29, 2014, the Department filed non-detained petitions, pursuant to section 300, subdivision (b), alleging that then eight-year-old B.M., then six-year-old S.K., and then three-year-old M.P. came under section 300, subdivision (b). Specifically, the petitions alleged that Mother had

unaddressed mental health issues that affected her ability to parent, the children had serious dental problems that Mother had not adequately addressed, and Mother continued to leave the children with the maternal grandmother for long periods of time without any provision of support. The petitions for B.M. and S.K. further alleged that Mother had removed them from school and had not followed up with their educational needs.

In reports filed on November 20, 2014, in support of the petitions, the social worker reported that Mother and B.M.'s father shared custody of B.M., the current whereabouts of S.K.'s father were unknown, and M.P.'s alleged father would be notified of the hearing.⁵ The social worker further reported that Mother's mental health issues had complicated her ability to safely parent. The Department had received referrals alleging that Mother was staying in different homes that were considered " 'questionable' " and were known to law enforcement for illegal substances.

As a result of her neglect, the children needed extensive dental treatment. The social worker had met with the three children and observed that S.K.'s bottom molars appeared to be at least 50 percent missing and the edges of the rotten teeth were jagged and sharp in places. When asked, S.K. said his mouth and teeth hurt "sometimes." The social worker observed M.P.'s teeth and saw that her two top front teeth were cracked and about 50 percent missing. One molar appeared to be black. Mother had taken M.P. to a dentist in September 2014, for a new patient exam. The treatment plan was for M.P. to have two teeth extracted. S.K. and B.M. had dental exams scheduled, but Mother had arrived 35 minutes late for S.K.'s October 8 appointment, and it was rescheduled for December 16. On September 8, Mother took B.M. to his appointment, and he was found to have six cavities. When Mother was asked to sign a treatment plan, she said she wanted to get a second opinion from a holistic doctor. No follow-up appointment had yet been made for B.M.

⁵ None of the fathers are parties to this appeal. We shall set forth facts related to them only to the extent they are relevant to Mother's appeal.

In addition, Mother had removed B.M. and S.K. from their school to place them in a homeschooling situation through a charter school. The academic year began in August 2014, but Mother failed to complete the enrollment papers until September 16. The two children were enrolled only from September 16 to September 26, because Mother did not comply with the school's requirements. She had left them with the maternal grandmother, "making it impossible for the children to receive any type of schooling." The maternal grandmother and B.M.'s father had then enrolled B.M. at an elementary school, which he attended for one day, after which Mother kept him out for the following week. Mother had refused to allow S.K. to attend the same elementary school.

The maternal grandmother had informed the Department that she attempted to give Mother a social worker's business card, at the social worker's request, but Mother refused to take the card or call the Department. Mother then became agitated; she was screaming and could not calm down. The maternal grandmother therefore called law enforcement.

The social worker believed that Mother's unaddressed mental health issues warranted further Departmental involvement. The Department noted that services had previously been provided to Mother, including counseling, parent training, family meetings, referrals to alcohol and other drug (AOD) services, and collaboration with Mother to allow the children's needs to be met.

On November 20, 2014, the juvenile court ordered, inter alia, that the parents keep and attend regular dental and medical appointments for the children, and set the matters for a jurisdiction hearing.

On December 24, 2014, the Department filed first amended petitions, pursuant to section 300, subdivision (b), in order to remove six-year-old S.K. and four-year-old M.P. from Mother's care.⁶ The Department also filed a new petition, seeking to remove

⁶ At that point, B.M.'s father apparently had been granted temporary sole physical and legal custody of B.M., pursuant to a September 30, 2014 family court order.

Mother's baby boy, born two weeks earlier, from her care.⁷ That petition alleged, in addition to Mother's unaddressed mental health issues, that she had not followed up with medical care for the baby following a home birth.

In detention reports, filed on December 29, 2014, the social worker reported that S.K., M.P. and the baby had been placed with their maternal grandmother. The social worker further reported that the Department had received a referral on December 23, stating that mother had given birth to her baby in a friend's shower and that she had not followed up with medical care for the infant; she also remained out of contact with the Department. Earlier in December, Mother had told the social worker that she was getting a second opinion on dental care for the children, and preferred a holistic approach. She had not followed through with needed dental appointments for M.P.

After receiving the December 23, 2014 referral, the social worker and a public health nurse had met with friends of Mother at a Dollar Tree store. The friends were concerned about S.K., M.P., and the baby because, after one friend had told Mother they could not stay with her, Mother went to stay with a heroin addict. The friends were worried about the children's safety, and they followed Mother until the social worker arrived. Mother fled with the children and tried to hide; she then fled from her hiding place, running across the street with the children without regard to traffic. The social worker ultimately met with the Mother in the Dollar Tree store, where Mother said she had a safe place to stay, but would not disclose the location. The social worker detained the children at that time. The social worker subsequently learned that Mother had cancelled an October dental appointment for M.P. She had also refused to fill out paperwork for needed dental work for S.K.

At the initial detention hearing, held on December 29, 2014, the juvenile court found that continued detention was necessary because there were no reasonable means by which the children's physical or emotional health could be protected without removing them from Mother's custody, and Mother was ordered to have two two-hour supervised

⁷ The identity of the yet-unnamed baby's father was unknown.

visits each week. As Mother had contested detention, a contested hearing was scheduled for the following day, December 30, 2014.⁸

At the December 30, 2014 contested detention hearing, the social worker assigned to this matter, Anna Anguiano, testified about the children's dental issues. S.K. had the worst problems, with 13 of 20 teeth decayed, including 5 with abscesses. Some of his molars were completely eroded, with "only a couple stubs there." He said his teeth hurt when he eats carrots and apples. In late October, a dentist had recommended surgery as soon as possible. Mother had not followed through on that treatment recommendation. B.M. and M.P. had lesser dental issues. Mother also appeared to have mental health issues. Her behavior was at times erratic.

Emergency response social worker Debra Patton also testified about the Department's concerns regarding the children's safety. The new baby, who was born in a shower, was not seen by a doctor until Patton accompanied Mother and the baby to a clinic, at which time he was found to be healthy. There were also educational concerns related to Mother wanting to home school the children and her leaving them frequently with the maternal grandmother without any provision for support. Finally, the Department was concerned that the children were "exposed to the cold, elements, because many times there is no place for them to reside. And, so, there has been a past history of them not having a place to stay." Mother and the children also stayed with various friends at times. Mother had not provided Patton with an address of where she lived and had refused to show Patton where she lived.

Miriaha Jones, who had known Mother for eight or nine years, testified that Mother and three of the children had stayed with her on the night of December 22, 2014.⁹

⁸ Before the hearing commenced, the Department filed first amended petitions as to B.M. and the new baby, along with second amended petitions as to S.K. and M.P. The amended petitions included the original allegations made under subdivision (b) of section 300. The Department stated that these amended petitions were intended to "reference the sibling matters and contain[ed] no new allegations."

⁹ B.M. was not with Mother that night.

Mother took very good care of the children. They were all healthy and the baby was very content. Mother was “a really good mom” and Jones had never seen her being inappropriate in any way with the children. Jones let Mother and the children stay with her a couple of times a month or more. Mother did not have a permanent home at that time, so she also stayed with a few other friends. Jones further testified that when Mother and the children stayed with her, the children always attended school. Jones was not aware of Mother having any mental health issues.

At the December 31, 2014 continued detention hearing, Mother testified that her new baby was born in a shower stall while her doula was on the way because the baby “just came so quickly.” There were no complications with the birth and Mother had baby supplies ready. When the baby was two days old, Mother took him to a clinic, where she was able to get him weighed and measured. She was also given a follow-up appointment for about two weeks later.

Mother further testified that she had not stayed with a heroin addict and that, if the children were returned to her, she would like to stay at the Rescue Mission while applying to stay at the Multiple Assistance Center (MAC). Also, S.K. and B.M. had begun attending elementary school in September 2014, after the maternal grandmother had them unenrolled from the school Mother had chosen. Mother was committed to ensuring that they attended school each day.

Regarding the dental issues, Mother testified, “They’re trying to force a procedure and cut open and drill [S.K.’s] mouth when he’s requested to get a second opinion, so I’m trying to exercise his patient rights and see another provider before I get forced to have a surgical procedure that I haven’t got a second opinion about.” Mother claimed to have called numerous dentists, but did not yet have an appointment for a second opinion because it was the holiday season. Mother also did not understand the suggested treatment and wanted to learn more about the procedure. A nurse at the dentist’s office had informed her that S.K.’s tooth decay could cause increasing ill health and that, if she did not get treatment for him within three months, the office would notify child welfare services. S.K. had since been referred to a holistic dentist, but in the meantime she was

using infection-fighting essential oils on S.K.'s teeth. If the children were returned to her, Mother was not sure she would be willing to consent to the recommended treatment.

The maternal grandmother testified that she was the current caregiver for the three younger children, and she took care of B.M. most days also. She was aware of Mother's mental health issues because she had read the prior psychological evaluations. She had observed Mother repeatedly ranting and exhibiting rage over the past year. She had also seen Mother smoking marijuana while still nursing M.P., and some of Mother's friends smoked marijuana in front of the children. The maternal grandmother had never unenrolled the children from the charter school in which Mother had enrolled them. Rather, the school had terminated them because they had not attended meetings and Mother had not turned in the children's work. The maternal grandmother had petitioned for guardianship of the children because of concerns about Mother keeping a home and her behavior with the children.

At the conclusion of the detention hearing, the juvenile court left the existing findings and orders in place with respect to S.K. and M.P. As to B.M., the court found a need for continued detention and released him to his father pending the next hearing. As to the baby, the court found that the evidence failed to show that Mother had not followed up on medical care after the birth, but it found that there was prima facie evidence that Mother's unaddressed mental health issues may affect her ability to care for him. At the Department's request, the maternal grandmother was given educational rights and Mother was ordered not to breastfeed the baby until she had four clean drug tests.

In jurisdiction reports prepared on January 6, 2015, the social worker reported that S.K., M.P., and the new baby were still placed with their maternal grandmother; Mother and B.M.'s father had shared custody of B.M.¹⁰ Around December 30, 2014, the principal at B.M. and S.K.'s elementary school called the social worker and told her that,

¹⁰ On January 7, 2015, the Department filed a second amended petition as to the baby, in which it amended the section 300, subdivision (b), allegations and added a sibling allegation pursuant to subdivision (j).

although both children were enrolled in the school in early September 2014, neither had ever attended, and were therefore unenrolled later that same month. They were reenrolled in October, but both had had some absences and tardies; the principal had told the social worker that the boys had “ ‘missed so much school when mom had them.’ ”

The social worker further reported that Mother had not yet secured housing, but had told the social worker that, if the Department had arranged it, she could have gone to various shelters or a hotel. Mother also said she was working on housing and had contacted owners of empty farmhouses. She found one that she liked, but was told that the Department of Housing and Urban Development (HUD) would not approve it for her Section 8 voucher.

Regarding S.K.’s dental issues, Mother had told a social worker that S.K.’s dentist had recommended that he get surgery within three months. Mother said she was using tinctures and other herbal remedies and wanted to get a second opinion from an herbalist, but none of them accepted Medi-Cal. She also said she did not want to force S.K. to get surgery and she did not understand the procedure because the dentist had not explained it to her. Mother also said she had been informed that S.K. could die in a month if he did not have the dental treatment, but she did not believe this.

The social worker reported that, two days after the baby’s birth in December 2014, Mother took him to a clinic to be weighed and measured. Since a pediatrician had not yet evaluated the baby, Mother agreed to take the baby to a doctor, and did so six days after the birth. The doctor reported that the baby appeared to be full term and able to see and hear. Mother was unsure whether she wanted a metabolic screen done. Although Mother said she had received prenatal care for the baby, her medical records reflected that she had not returned for additional care after her positive pregnancy test.

The contested jurisdiction hearing began on January 26, 2015. Mother, who was the sole witness, testified that she had received prenatal care for the baby, now named H.T., and that she had diapers and other supplies ready when he was born. He was born healthy and was breastfeeding regularly until he was taken from her, at six days old. She

also testified for the first time that her doula's son, who was an "EMT," did a "baby check" on the day H.T. was born.

Mother had last had her own housing over nine months earlier and, since then, she had been homeless. She had stayed with various friends, and had not slept outside with the older three children in the month before H.T.'s birth. She was able to feed the children because she had food stamps. Mother was still waiting for a place in the winter shelter program because she did not want to take a place away from other people who did not have friends to stay with. She was also welcome to stay at the Rescue Mission. She also believed the Department was planning to give her a hotel voucher just before the children were removed.

With respect to S.K. and B.M.'s schooling, Mother testified that they had started the school year late because she had to obtain immunization waivers for them before they were permitted to enroll at the charter elementary school, through which they were to be homeschooled. After that, the maternal grandmother took B.M. out of the charter school and his father enrolled him in another school, all without notifying Mother.¹¹

Mother also testified about the children's dental issues. After a dentist told her in October 2014 that S.K. was at risk due to tooth decay and abscesses at the base of his teeth, Mother began researching how other people had healed from that condition. She also began using anti-infection herbs on S.K.'s teeth. The dentist's report said S.K. needed root canals and crowns for his back teeth, but Mother wanted more details so that she could understand why S.K. would need anesthesia. She could not, however, get additional information from the dental office. Mother had made an appointment for S.K. with a "holistic practitioner." He also had an appointment scheduled for February 10, 2015 with a holistic dentist.

¹¹ On cross-examination, Mother failed to directly answer numerous questions regarding whether B.M. was dropped from the charter school due to the failure to comply with its academic program.

Mother described S.K.'s dental problems as "childhood tooth decay," which "affects a lot of American children," though she acknowledged that the dentist had expressed concern that she not let S.K.'s condition escalate to the point that he could die. She was aware of the risk that the infection could go into his blood or brain. The condition of S.K.'s teeth had been described to Mother as "severe," but she believed he "fits in the category of like 90 percent of American kids or something—70 percent has tooth decay."

M.P. was supposed to have some cavities filled and two chipped teeth pulled, and B.M. was supposed to get sealants and have some cavities filled. Mother did not want to have these procedures done because the cavities were minor and she wanted to try "remineralization" of their teeth. Mother had tried contacting numerous local healers and dentists in the area to examine the children, but none of them had appointments available for a long time. Mother also testified that, when the Department threatened to take the children from her if she did not obtain the needed dental treatment, she had told the social worker, " 'Why not just force the surgery rather than take my children from me would [sic] be my preference.' "

When asked whether she believed she had a mental health condition, Mother responded, "Well, I struggle to stay optimistic under these circumstances by using positive affirmations, friends giving me hugs, encouragement, makes it [sic] so that I can maintain strength in my convictions that I'm a loving mother and this is just a mix-up." She also believed she "might be prone to depression because there's a lot of negativity and cruelty and false statements and my children have been taken from me," but, through "the positive techniques of maintaining mental health, I believe I can use those to stay mentally healthy." Mother said she had completed a psychological evaluation during a former case with the Department, and was found to have "narcissistic personality features." She did not directly respond to questions regarding whether she had also been diagnosed with "histrionic personality disorder" and "schizo-typal thought process." She

expressed a willingness to participate in a new psychological evaluation, though she did not believe she had mental health issues.¹²

The jurisdiction hearing concluded on February 2, 2015. Following arguments of counsel, the juvenile court sustained each amended petition, finding Mother “to be lucid, grounded, but entirely—I’m not sure the term, but outside the realm of rational thought and considered decisions for the children.” The court also mentioned the dental, housing, and educational issues in concluding that “each child is quite frankly at risk based on the mother’s behavior. Whether that be from unaddressed mental health issues or just choosing to live some alternative lifestyle, which . . . is permissible provided it comes within the bounds of reasonableness, safety of the health, education, welfare of the children.” The court also ordered a new psychological evaluation for Mother, pending disposition.

In disposition reports prepared on February 17, 2015, the social worker reported that Mother and B.M.’s father had shared custody of B.M. S.K., M.P., and H.T. remained with the maternal grandmother. B.M.’s father had maintained a stable job for seven years and had a good relationship with the maternal grandmother. B.M. was doing well with his father, and also spent quality time with his half siblings at the maternal grandmother’s house.

Mother had been provided a minimum of four hours per week of supervised visitation.¹³ She had begun contacting the Department and working with the social worker. She said she wanted her children, and needed housing, a job, and counseling. She also had repeatedly told the social worker that she had not dealt with the children’s dental needs “because she is advocating for the [children’s] patient rights.” Mother also described the maternal grandmother as an “ ‘abuser.’ ” The maternal grandmother

¹² At one point during the hearing, Mother asked for a break because she was “starting to have mental problems” because “[e]veryone is laughing about this.”

¹³ B.M.’s father had said he would be uncomfortable with Mother having unsupervised visits with B.M., who became upset after visits with Mother.

believed that Mother was intelligent and that she would benefit from AOD and mental health services. She expressed love for her daughter and a willingness to be part of Mother's support network as long as the children were safe. She also told the social worker that Mother had had a difficult time since the death of her paternal grandmother three years earlier and the death of her father the year before.

B.M.'s dental needs had been addressed and the maternal grandmother was transporting him to school daily. S.K.'s dental cavities and abscesses had not yet been treated, but he had a dental appointment scheduled in early March 2015. He was doing well at his grandmother's house, and she was also transporting him to school daily. M.P. had a dental appointment scheduled for May 2015, to treat her cavities and abscesses. She was doing well with the maternal grandmother and was attending Head Start. H.T. was relaxed with the maternal grandmother; he appeared happy and smiled often.

Mother had been referred to AOD services, mental health services, a parent education program, and a dental education program. Nevertheless, the social worker believed that Mother had not addressed her mental health issues, specifically the previously multiple personality disorders, and that this was "directly affecting her ability to safely parent. The mother has stated many times she believes the [children have their] own right to decide on dental and medical treatment. The mother is unable to distinguish the difference between the role of a parent and a child."

The social worker believed the children could not remain safely in Mother's home and therefore recommended that they be declared dependents of the court and removed from Mother's custody due to her mental health issues and her inability to meet their medical and dental needs. As to S.K., M.P., and H.T., the Department also recommended that the court order reunification services for Mother. As to B.M., because his father had demonstrated a commitment to be involved in his care, the Department recommended that the juvenile court terminate B.M.'s case and enter family law custody orders giving his father sole physical and legal custody.

Mother submitted documentation to the juvenile court, including a 2013 mental health assessment in which she had participated.¹⁴ In that assessment, the therapist wrote that Mother did not report current hallucinations or delusional beliefs, but indicated that she was feeling socially persecuted by her mother and others “for what she feels are legitimate life choices including living outside . . . , eating food from dumpsters, and seeking treatment for her child’s dog bite from a veterinarian instead of a doctor.” In progress notes from a January 2015 mental outpatient meeting, the practitioner wrote that “[f]unctional impairment exists due to client[’]s problems with depression and anxiety including anger and frustration and difficulty managing stress which interfere with all areas of life functioning including employment.” The practitioner also noted that Mother was “focused (almost obsessed) with circumstances around removal [of her children] and is unable to engage in discussion of other issues.”

The contested disposition hearing took place on March 16, 2015. The sole witness was Social Worker Anna Anguiano, who had been assigned to the case since late November 2014. Mother’s counsel cross-examined Anguiano regarding whether visits should be supervised. Anguiano testified that, as in most cases, the Department had recommended supervised visitation until progress was seen in the case plan. The social service aide who supervised Mother’s visits at the Family Connection Center told the social worker that Mother had talked about the case “on multiple occasions” with the children, even after she had been told that doing so was not appropriate. Also, on one occasion, “the social service aide attempted to bring one of the children to a visit and he refused and cried.” The maternal grandmother, who supervised visits in the park or in the community, had told the social worker sometime in the last two months that she had “cut the visits short because mother gets manic.” Anguiano testified that she would recommend unsupervised visits when she was able to have a conversation with Mother

¹⁴ This was not a psychological evaluation; it was an assessment for a “Welfare to Work” program. At the disposition hearing, Mother’s attorney stated that Mother objected to obtaining a new mental health assessment.

“that isn’t escalating,” when Mother could have visits where she was not bringing up the case, and when Mother was able to have an appropriate visit with the children.

At the conclusion of the hearing, the juvenile court ordered a minimum of four hours of supervised visitation with all of the children, as recommended by the Department. The court explained to Mother that unsupervised visits could not occur until she “reach[ed] a point of the ability to interact with the children, care for them, and not place adult items on the children. . . . [¶] “[I]t’s not going to be okay whatsoever to talk about the case with the kids. You can tell them how you’re doing, that’s the extent of it.” The court also ordered Mother to participate in reunification services and a mental health evaluation, stating: “The flat fact was the children’s medical needs were unmet to such a degree, [as to be] life threatening, so we need to change that.” The court found that there was a substantial danger to the health, safety, protection or wellbeing of S.K., M.P., and H.T. if they were returned to Mother’s care, based on Mother’s “mental health issues, and her inability to meet the children’s medical and dental needs,” and declared the three children dependents of the court. The court also entered family law custody orders granting B.M.’s father sole physical and legal custody. The court then terminated the dependency as to B.M.

On March 24, 2015, Mother filed notices of appeal challenging the court’s jurisdiction and disposition findings and orders as to all four children.¹⁵

¹⁵ Although the notice of appeal stated that the appeal was from the orders relating to both jurisdiction and disposition, in her briefing, Mother has not challenged any of the findings and orders relating to jurisdiction.

The Department also notes that Mother has not challenged the family court orders giving sole physical and legal custody of B.M. to his father, and claims that any argument relating to the detention or removal of B.M. is therefore moot. Mother disagrees. Because, as discussed in the text, *post*, we conclude all of the juvenile court’s orders were well within its discretion, we need not address this question of mootness.

DISCUSSION

I. Dispositional Order of Removal

Mother contends the juvenile court's orders removing the children from her custody are not supported by substantial evidence.

Section 361, subdivision (c), provides in relevant part: "A dependent child may not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated unless the juvenile court finds by clear and convincing evidence . . . [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody."

In addressing Mother's claim, we review the record in the light most favorable to the juvenile court's dispositional orders "to determine whether it contains sufficient evidence from which a reasonable trier of fact could make the necessary findings by clear and convincing evidence." (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 441 (*Mariah T.*)) " 'Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt.' [Citation.] [¶] At the same time, jurisdictional findings are prima facie evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. [Citations.]" (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 146.)

We conclude the record in this case contains substantial evidence supporting the juvenile court's dispositional orders. First, this is Mother's fourth dependency. She was provided with both family maintenance and reunification services over a number of years, with limited results. (See *In re T.W.* (2013) 214 Cal.App.4th 1154, 1163-1164 [considering parents' failure to abide by case plan during three-year period after dependency began in determining that removal was necessary].)

In addition, many of the same problems that Mother has faced since 2006 have persisted or recurred. The Department initially filed non-detained petitions in this matter, in the hope that its concerns could be resolved without removing the children from Mother's custody. Only after it became clear that Mother was not changing her behavior and that the children could not remain safely in her care were they removed.

One of the primary issues leading to the children's removal was the fact that the three older children's teeth were in various stages of deterioration. S.K.'s situation was the most dire. Half of his bottom molars were "eroded away"; he had sores in his mouth; 13 of his 20 teeth were decayed and rotten; and, of those 13, 5 had abscesses.

While Mother acknowledged that she had been informed of the grave danger to S.K.'s health—including the possibility of death—if he did not receive treatment within three months, she continued to make excuses for not following through with the needed dental care. She also minimized S.K.'s dental problems, describing them as "childhood tooth decay," which "affects a lot of American children." The reasons she gave for putting off S.K.'s and the other children's treatment included the claim that she needed more information about why S.K. needed anesthesia, she wanted to try using herbal remedies first, she wanted to consult with a holistic dentist, and, finally, she believed the children should be allowed to make their own decisions about whether to participate in dental treatment. The juvenile court reasonably found that removal was necessary in light of Mother's ongoing unwillingness to put the children's serious health needs ahead of her own desires for natural and alternative remedies. (See *Mariah T.*, *supra*, 159 Cal.App.4th at p. 441.)

In her briefing, Mother states that the greatest danger to the children stemmed from her failure to adequately treat their dental problems, but claims that this danger "could have been addressed by simply ordering the recommended dental treatment," citing section 369, which gives the juvenile court jurisdiction to order the necessary medical care for a dependent minor when the parent is unwilling to authorize such care. (Cf. *San Joaquin County Human Services Agency v. Marcus W.* (2010) 185 Cal.App.4th 182, 184-185.) Here, at the conclusion of the November 2014 detention hearing, the

court did order Mother to “keep/attend regular dental and medical appoints for the child[ren],” but Mother continued to refuse or postpone the necessary dental treatment, offering various excuses. Mother’s assertion that, as she testified at the March 2016 disposition hearing, she would prefer the court to “force the surgery rather than take my children from me,” is undermined by the fact that she had already failed to follow the court’s November 2014 order at the time she made that statement.

Mother’s homelessness also continued to be a problem at the time of the disposition hearing. Although she acknowledged that she and the children could have stayed at a shelter, she chose to stay with friends, where controlled substances were reportedly being used. She also refused to give the social worker information about where she was staying. Mother claimed to be working on obtaining housing, saying that she had contacted owners of empty farmhouses, but could not get HUD approval for her Section 8 voucher. While her homelessness, in isolation, may not have required the children’s removal, taken together with the several other issues involved, that Mother was staying in potentially unsafe places, while refusing to disclose the locations to the Department, was certainly cause for concern. (Compare *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1213 [appellate court held that a finding of detriment could not be based solely on fact that father was too poor to afford housing, especially when Department “might have assisted [father] to obtain affordable housing, but made no effort to do so”].)

Mother had also kept the two older children from attending school. First, she failed to follow through on her plan to home school them, and then kept them from attending the elementary school in which B.M.’s father and the maternal grandmother had subsequently enrolled them. Again, while perhaps insufficient on its own to justify removal, Mother’s conduct related to B.M. and S.K.’s schooling is another example of Mother’s inability or unwillingness to take care of her children’s needs. (Compare *In re Janet T.* (2001) 93 Cal.App.4th 377, 388-389 [appellate court found that mother’s failure to ensure the children’s school attendance was “a very serious allegation and a factual circumstance which needed immediate correction,” but was “not the same as saying the

failure to attend school created a ‘substantial’ risk of suffering ‘*serious physical harm or illness*’ ” for purposes of sustaining a petition under section 300, subdivision (b)].)

With respect to H.T., there were questions about whether Mother had obtained appropriate medical care for him after his birth, but, at the time of the detention hearing, the juvenile court found the evidence of that allegation insufficient. However, as the court *did* find, Mother’s unresolved mental health issues and her unwillingness or inability to adequately care for her older children demonstrated the risk to this young baby, whose safety and wellbeing depended completely on Mother’s ability to appropriately respond to his needs. As the appellate court stated in *In re Cole C.* (2009) 174 Cal.App.4th 900, 904, 918, “a child does not need to be harmed before being removed from his parents’ custody” since “[o]ne of the goals of dependency is to protect a child before the harm takes place.” (See *id.* at pp. 917-918 [social workers reasonably believed that younger half sibling was not safe and remained at risk of harm based on father’s treatment of older children, along with his lack of commitment to participating in services].)

Finally, the ongoing risk to all of the children is exemplified by evidence that, on the day the children were detained, Mother’s own friends had called the social worker with concerns about the children’s safety. Mother subsequently fled and tried to hide from the social worker, taking the children across a street without any regard for traffic.

Underlying the various other concerns in this case are Mother’s continuing mental health issues, which plainly need to be addressed before the children can be safely returned to her custody. The examining psychologist wrote in Mother’s 2006 psychological evaluation that Mother appeared to be “prone to forming mistaken impressions of what children’s behaviors signify and to making ill-advised childcare decisions without appreciating the consequences of these decisions.” These issues plainly still existed at the time of the disposition hearing in this dependency case. In order to begin to overcome the mental health challenges that prevent her from safely parenting her children, Mother must now complete the updated psychological evaluation

ordered by the juvenile court and fully participate in, inter alia, the mental health services and parent education components of her case plan.

While acknowledging that “some level of intervention” was “arguably justified” due to her “condition [that] has interfered with her ability to make good decisions about the minors’ education and dental needs,” Mother argues that the Department should have considered less drastic alternatives and made reasonable efforts to prevent removal of the children from her custody. (See § 361, subd (c)(1) [before removing a child from parental custody, court must find there are no reasonable means by which child’s physical health can be protected without removal].) We find this argument unpersuasive.

As already discussed, the Department initially filed non-detained petitions in this matter and offered Mother a variety of services in an effort to allow the children to remain safely with her. There is, however, no evidence in the record that Mother took advantage of the services or resources offered to her before the children were removed. Moreover, it was not until it became apparent that the children’s health and safety remained at risk, due to various unaddressed issues and despite the reasonable measures taken, that the Department filed amended petitions and requested out of home placement. (See *In re John M.* (2012) 212 Cal.App.4th 1117, 1126-1127 [juvenile court could reasonably infer that mother’s failure to follow through on securing needed services for child, her failure to ensure that he regularly attended school or to bathe him regularly, and having him live in her car, were recurring problems, which, together with mother’s recent violations of court orders, showed that child “could not be safely placed in mother’s custody in the hope that she would comply with court orders or [Department] supervision”]; *In re Maria R.* (2010) 185 Cal.App.4th 48, 71, disapproved on another ground in *In re I.J.* (2013) 56 Cal.4th 766, 781 [given mother’s lack of insight and refusal to cooperate with Agency, juvenile court could reasonably conclude that maintaining children in her care, even with intensive services, would not sufficiently protect the children from risk of harm]; compare *In re Henry V.* (2004) 119 Cal.App.4th 522, 529 [juvenile court should not have removed child where there was “ample evidence that appropriate services could have been provided to [the mother and child] in the family

home”]; *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60 [in filthy house case, Department could have returned child to Mother “under stringent conditions of supervision” and with supportive homemaker services].)

In light of the evidence in the record demonstrating Mother’s ongoing mental health issues and problematic behaviors, substantial evidence supports the juvenile court’s findings, by clear and convincing evidence, that “[t]here [was] a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the [children if they] were returned home, and there [were] no reasonable means by which [their] physical health [could] be protected without removing [them from Mother’s] . . . physical custody.” (§ 361, subd. (c)(1); see *Mariah T.*, *supra*, 159 Cal.App.4th at p. 441.) It is now up to Mother, who plainly loves her children, to take advantage of the services and support being offered, so that the children can be safely returned to her care.¹⁶

II. Supervised Visitation

Mother contends that, even if the children were properly removed, the juvenile court abused its discretion when it ordered that visits be supervised.

Pursuant to section 362.1, subdivision (a)(1)(A), an order placing a child in foster care and ordering reunification services generally must provide “for visitation between the parent or guardian and the child. Visitation shall be as frequent as possible, consistent with the well-being of the child.” Under section 362.1, subdivision (a)(1)(B), however, “[n]o visitation order shall jeopardize the safety of the child.” The juvenile court therefore “has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion. [Citations.] The court’s determination in this regard will not be reversed absent a clear abuse of discretion. [Citation.]” (*In re Neil D.* (2007) 155 Cal.App.4th 219, 225.)

¹⁶ Because B.M.’s dependency case was terminated, any changes with respect to custody of B.M. will have to be addressed as a family law matter.

In this case, the juvenile court reasonably found that, at least initially, visits should be supervised. The evidence on which the court based its orders showed that mother had repeatedly talked about the case with her young children during visits, even after being told that it was inappropriate to do so. On one occasion, one of the children had cried and refused to come to a visit with Mother. In addition, B.M.'s father had told the social worker that he did not feel comfortable with Mother having unsupervised visits with B.M. because B.M. "becomes upset after the visit." There was also evidence that, when supervising visitation, the maternal grandmother had to "cut the visits short because mother gets manic." Finally, there was evidence that, shortly before the children were detained, Mother had run across a street with the children in tow, without regard for traffic.

Given this evidence, the juvenile court did not exceed the bounds of reason when it determined that unsupervised visitation could not occur until Mother "reach[ed] a point of the ability to interact with the children, care for them, and not place adult items on the children."¹⁷ The order for supervised visitation was not an abuse of discretion. (See *In re Neil D.*, *supra*, 155 Cal.App.4th at p. 225.)

DISPOSITION

The orders appealed from are affirmed.

¹⁷ Mother observes that some of this evidence came from the social worker's recitation of the hearsay statements of others. However, at the dispositional hearing, counsel for the Department *and* Mother's counsel elicited hearsay testimony without any objection or question about its veracity. For example, on cross-examination, Mother's attorney asked if the social worker had heard from the person supervising visits whether the children enjoyed the visits.

Kline, P.J.

We concur:

Richman, J.

Stewart, J.